

**SECTION 8. IMPLEMENTATION AND MAINTENANCE REQUIREMENTS**

<b>I. Private Development and Redevelopment Projects</b>	<b>8-2</b>
1. Permanent BMP Implementation	8-2
2. Construction BMP Implementation	8-3
<b>II. Public Development and Redevelopment Projects</b>	<b>8-4</b>
1. Permanent BMP Implementation	8-4
2. Construction BMP Implementation	8-4
<b>III. Permanent BMP Maintenance Agreement Requirements</b>	<b>8-5</b>
1. Inspection, Operation, and Maintenance Plan (IOMP)	8-5
2. Access	8-6
<b>IV. Potential Permanent BMP Maintenance Mechanisms</b>	<b>8-6</b>
1. Private Projects	8-6
2. Lease Provisions	8-7
3. Public Entity Maintenance	8-7
4. Conditional Use Permits	8-8
<b>V. Standard Storm Water Facilities Maintenance Agreement</b>	<b>8-8</b>

**SECTION 8. IMPLEMENTATION AND MAINTENANCE REQUIREMENTS**

After all project BMPs have been approved by the City, applicants and City project managers must ensure implementation and maintenance of the BMPs according to the processes outlined in the applicable sections for private development/redevelopment projects (Section 8.I) or public development and redevelopment projects (Section 8.II).

Non-compliance with the implementation and maintenance requirements will constitute a violation of Chapter 14.20 of the Chula Vista Municipal Code (CVMC) and will be subject to enforcement by the City.

**I. Private Development and Redevelopment Projects****1. Permanent BMP Implementation****a. Permanent BMPs (applicable to the SUSMP Requirements)**

Applicants proposing projects that include structural permanent Site Design, Low Impact Development, or Treatment Control BMPs shall implement all required BMPs prior to the occupancy or operation of the development project. The City will require a maintenance agreement, satisfactory to and subject to the approval of the City Engineer, in accordance with the program outlined in Section 8.III: "Permanent BMP Maintenance Agreement Requirements". Prior to the issuance of any permits or approvals, the project proponent must obtain City Engineer's approval of the agreement. The permanent BMPs shall be graphically shown on the construction plans, where possible, and made a condition of the project's permit/approval. Permanent BMPs shall be inspected, maintained, repaired, or replaced, as stipulated in the maintenance agreement throughout the life of the project. An Inspection, Operation, and Maintenance Plan (IOMP), as discussed in Section 8.III.1, shall be included in the Water Quality Technical Report for the project and a copy shall be submitted to the City with the maintenance agreement. The permanent BMPs' IOMP shall also be referenced on the construction plans and made a condition of the project's permit/approval.

Non-structural permanent BMPs shall be implemented throughout the life of the project.

**b. Standard Permanent BMPs (applicable to non-SUSMP projects)**

Applicants proposing projects that include Standard Permanent structural BMPs (described in Section 6 of this Manual) such as Site Design or Low Impact Development BMPs shall implement all required BMPs prior to the occupancy or operation of the development project. The permanent BMPs

shall be graphically shown on the construction plans, where possible, and made a condition of the project's permit/approval. Permanent BMPs shall be inspected, maintained, repaired, or replaced as necessary to maintain their effective operation. An IOMP shall be attached to the construction plans and made a condition of the project's permit/approval. A maintenance agreement is not required for non-SUSMP projects; however, non-compliance with the requirements of the IOMP will be a violation of Chapter 14.20 of the CVMC, and subject to enforcement by the City.

Non-structural permanent BMPs shall be implemented throughout the life of the project.

The City of Chula Vista will annually require responsible parties for the maintenance of permanent BMPs, to send to the City certified records of inspection, maintenance, repair and replacement of the BMPs during the previous year. Responsible parties shall maintain records of all inspections, maintenance, repair, and replacement of structural permanent BMPs for at least 5 years, and provide such records to the City when requested.

## **2. Construction BMP Implementation**

### **a. Construction Projects One Acre or Over**

Construction storm water performance standards required by the City of Chula Vista are described in Section 7 of this Manual. Additionally, projects disturbing one acre or more are required to comply with the National pollutant Discharge Elimination System (NPDES) General Construction Permit, No. CAS000002, or re-issuances thereof. Projects proposing to disturb one acre or more during construction shall include all construction BMPs in a Storm Water Pollution Prevention Plan (SWPPP), prepared in accordance with Form 5503, Section 2 of this Manual. Construction BMPs shall also be shown on the plans, where possible. Any remaining construction BMPs that cannot be shown graphically on the plans shall be either noted or stapled to the plans and made a condition of the permit.

### **b. Construction Projects Under One Acre**

Projects proposing to disturb less than one acre during construction shall show construction BMPs, where possible, on the construction plans. Such projects are also required to complete a Construction Storm Water Management Plan (Form 5504A). A Copy of Form 5504A can be found in Section 2 of this Manual. The Construction Storm Water Management Plan will be a part of the project submittal, and made a condition of the permit.

Construction BMPs shall be implemented and maintained throughout the construction phase of the project in such a way as to effectively minimize, to the Maximum Extent Practicable (MEP), discharges of pollutants from the construction site. City inspectors may require additional BMPs during construction to ensure that the MEP standard is met.

## **II. Public Development and Redevelopment Projects**

### **1. Permanent BMP Implementation**

Public development projects are subject to the same permanent BMP implementation requirements as private projects. Permanent storm water requirements for public projects must be incorporated into the project design and described in a WQTR (where applicable) or Form 5501. Permanent structural BMPs shall also be described in the contract documents (plans and specifications) prior to bidding for construction contracts, or equivalent. An IOMP shall be included in the WQTR or attached to project plans. The IOMP shall identify a funding mechanism and the responsible City department for the maintenance of permanent BMPs. Public Works Inspectors shall ensure the construction of permanent structural BMPs.

### **2. Construction BMP Implementation**

Public development projects are subject to the same construction BMP implementation requirements as private projects. Construction storm water requirements must be incorporated into the project design and described in the contract documents (plans and specifications) prior to bidding for construction contracts, or equivalent. Project managers must utilize the standard specification and describe any project specific requirements.

For projects disturbing one acre or more, City project managers must ensure that a SWPPP is included in the project documents. Alternatively, a provision shall be included in the bid documents to make the contractor responsible for the preparation of the SWPPP. The contract documents must also include the requirement for the contractor to periodically update the SWPPP throughout the construction phase of the project.

For projects disturbing less than one acre, City projects shall have a specific Construction Storm Water Management Plan (CSWMP, Form 5504B, included in Section 2 of this Manual) developed to identify construction BMP requirements prior to sending the public project contracts out to bid. The contract documents shall include a requirement for the contractor to complete, sign, and update the CSWMP before the start of the construction and throughout the construction phase of the project.

**III. Permanent BMP Maintenance Agreement Requirements**

Private project applicants shall propose a maintenance agreement assuring all permanent BMPs will be maintained throughout the life of a project, satisfactory to the City. See Section 8.IV for a list of potential permanent treatment BMP maintenance mechanisms, and Section 8.V for a standard storm water management facilities maintenance agreement.

For development/redevelopment projects, the City-approved method of permanent BMP maintenance shall be incorporated into the project's permit, and shall be consistent with permits issued by resource agencies, before decision-maker approval. For projects requiring only construction permits, the City-approved method of permanent BMP maintenance shall be incorporated into the permit conditions before the issuance of any construction permits. In all instances, the applicant shall provide proof of execution of a City-approved method of inspection, maintenance, repair, and replacement before the issuance of construction approvals.

Also, in the Covenants, Conditions, and Restrictions (CC&Rs) documents, maintenance agreements, or other mechanism, the following requirements shall be included and addressed, as required by the City:

- a. Include requirements for compliance with non-structural permanent BMPs.
- b. Provide for long-term maintenance of structural BMPs.
- c. Require future tenants or owners to comply with the Standard Urban Storm Water Mitigation Plans (SUSMP) and Numeric Sizing Criteria of the Municipal Permit, Order No. R9-2007-0001.

City project managers developing public projects that are not required to obtain permits will be responsible for ensuring that a client department approved method of storm water BMP maintenance, repair, and replacement is developed prior to the commencement of construction.

For all properties, the verification mechanism will include the project proponent's signed statement, as part of the project application, accepting responsibility for all permanent BMP inspection, maintenance, repair, and replacement.

The maintenance agreement shall include the following:

**1. Inspection, Operation and Maintenance Plan (IOMP)**

The applicant shall submit to the City an Inspection, Operation, and Maintenance Plan (IOMP), prepared satisfactory to the City, with the approved maintenance agreement, which describes:

- a. The designated responsible party to manage the storm water BMPs.

- b. Employees' training program and duties.
- c. Operating schedule.
- d. Inspection and maintenance frequency.
- e. Routine service schedule.
- f. Specific maintenance activities (including maintenance of storm drain inlet stencils and signage).
- g. Copies of resource agency permits.
- h. Any other necessary activities.

At a minimum, maintenance agreements shall require the applicant to provide inspection and servicing of all permanent BMPs on an annual basis, or as frequently as required in the IOMP. The project proponent or City-approved maintenance entity shall complete and maintain IOMP forms to document all maintenance requirements. Parties responsible for the IOMP shall retain records of all inspections, maintenance, repair, or replacement activities for at least 5 years. These documents shall be made available to the City for inspection upon request at any time.

## **2. Access**

As part of the maintenance mechanism selected for the development, the City will require perpetual access to the permanent storm water management facilities on-site or off-site at any time and without prior notice for the purpose of inspection of the facilities. The grant of access shall be in a form approved by the City and shall run with the land throughout the life of the project, until such time that the storm water BMP requiring access is replaced and access is no longer needed, all to the satisfaction of the City of Chula Vista.

## **IV. Potential Permanent BMP Maintenance Mechanisms**

### **1. Private projects**

Project proponents must select a permanent treatment BMP maintenance mechanism for ensuring storm water BMPs inspection, maintenance, repair, and replacement in perpetuity. The City preferred maintenance mechanisms are as follows:

- a. Public Storm Water BMPs

The City may approve the following funding mechanisms:

- A Community Facilities District or other funding mechanism for public entity maintenance requested by the project proponent; or
- A Home Owners Association. In this case, the project proponent and HOA shall enter into a grant of access and maintenance agreement

with and in a form acceptable to the City setting forth the terms and conditions for said maintenance.

**b. Private Storm Water BMPs**

The City may approve the following funding mechanism:

- A Home Owners Association (“HOA”). The HOA formulation documents, and the associated Covenants, Conditions, and Restrictions shall include the obligation of the HOA to provide for such maintenance in perpetuity; or,
- A private entity for a project that meets the definition for a SUSMP priority project (see SUSMP priority projects definition in Section 3 of this Manual) where the project proponent requests that it be maintained by the project owner or approved private entity. In this case, the project owner shall enter into a maintenance agreement with, and in a form acceptable to, the City setting forth the terms and conditions for maintaining the proposed storm water treatment BMPs in perpetuity; or,
- A private entity for a project that does not meet any of the definitions of the SUSMP priority project (see SUSMP priority projects definition in Section 3 of this Manual). The City may allow the storm water BMPs to be maintained by the property owner or approved private entity. No maintenance agreement may be required in this case. Maintenance of the proposed storm water facilities would be enforced in accordance with the applicable City of Chula Vista ordinances, policies, and regulations.

**2. Lease Provisions**

In those cases where the City holds title to the land in question, and the land is being leased to another party for private or public use, the City may assure storm water BMP inspection, maintenance, repair, and replacement through conditions in the lease.

**3. Public Entity Maintenance**

The City, in its sole discretion, may approve a public or acceptable quasi-public entity (e.g., the County Flood Control District, or annex to an existing assessment district, an existing utility district, a state or federal resource agency, or a conservation conservancy) to assume responsibility for inspection, maintenance, repair, and replacement of the BMPs. Unless otherwise approved by the City, public entity maintenance agreements shall ensure estimated costs are front-funded or reliably guaranteed (e.g., through a trust fund, assessment district fees, bond, letter of credit or similar means). In addition, the City may seek

protection from liability by appropriate releases and indemnities. Storm water BMPs within the City's jurisdiction proposed for transfer to any other public entity will be subject to approval by the City before installation. The project proponent must take all steps necessary to ensure that the City is involved in the negotiation of maintenance requirements within its jurisdiction with other public entities accepting maintenance responsibilities; and, in negotiations with the resource agencies responsible for issuing permits for the construction and/or maintenance of the facilities. The City must be identified as a third party beneficiary empowered, but not obligated, to enforce any such maintenance agreement within its jurisdiction.

#### **4. Conditional Use Permits**

For discretionary projects only, the City may assure maintenance of storm water BMPs through the inclusion of maintenance conditions in the Conditional Use Permit. The City may require security in its discretion.

The City may in its discretion accept alternative maintenance mechanisms if such mechanisms are as protective as those listed above.

#### **V. Standard Storm Water Facilities Maintenance Agreement**

A "Standard Storm Water Facilities Maintenance Agreement" form acceptable to the City is included in this Section. The City Engineer may at his/her sole discretion require changes to the Standard Agreement Form.



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

CITY OF CHULA VISTA  
OFFICE OF THE CITY CLERK  
276 FOURTH AVENUE  
CHULA VISTA, CA 91910

---

Above Space for Recorder's Use

STORM WATER MANAGEMENT FACILITIES MAINTENANCE  
AGREEMENT WITH GRANT OF ACCESS AND COVENANTS

(Insert Project Reference Numbers)

**DEFINITIONS**

“Agreement” means this Storm Water Facilities Maintenance Agreement with Grant of Access and Covenants.

“Best Management Practices, or BMPs” means structural or non-structural pollution prevention measures, such as site design, source control, and treatment control methods required to minimize polluted runoff from the development during the post-development phase of the project. BMPs include, but are not limited to, Storm Water Management Facilities.

“City” means the City of Chula Vista, an official of the City, or any designated staff member acting on behalf of the City. The City Council, in Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, has authorized the City Engineer to sign this Agreement on behalf of the City.

“Inspection, Operation, and Maintenance Plan, or IOMP” means a description of inspection, operation, and maintenance activities and schedules required to ensure proper operation and effectiveness of the SWMFs into perpetuity, as required in the Chula Vista Development Storm Water Manual. A copy of the IOMP, as amended from time-to-time, shall be included in the Water Quality Technical Report for the project before issuance of a construction permit, and a copy shall be maintained on file with the office of the City Engineer. City may require amendments to the IOMP at its sole discretion.

“Owner” means the owner of Property signatory to this Agreement applying for a development or redevelopment project that includes permanent BMPs, and all Owner's successors in interest in Property, jointly (such as a Home Owners' Association) and/or individually.

“Property” means the property on which development is proposed, a legal description of which is attached herewith as Exhibit B.

“Responsible Party” means Owner and any other person, corporation, or legal entity accepting, in writing and in City approved form, responsibility on behalf of Owner.

“Security” means any Bond, Cash Deposit, or Letter of Credit that City may require from Owner as a result of Owner’s failure to effectively maintain development’s SWMFs, and is to assure the faithful performance of the obligations of this Agreement.

“Storm Water Management Facilities” (“SWMFs”) means all onsite and offsite structural facilities constructed for the treatment of project’s storm water runoff, proposed as part of the development project submittals, as approved by City prior to the issuance of a development permit, or as amended with City’s approval after the development is complete.

## **AGREEMENT**

This Agreement for the inspection, maintenance, and repair of certain Storm Water Management Facilities is entered into between \_\_\_\_\_ (“Owner”) and City for the benefit of City, Owner, successors in interest to City or Owner, and the public generally.

Pursuant to City’s urban runoff regulations, including Chula Vista Municipal Code, Chapter 14.20 (the “Storm Water Management and Discharge Control Ordinance”) and the Chula Vista Development Storm Water Manual, Owner has prepared and submitted to City a Water Quality Technical Report (“WQTR”), which is on file in the office of the City Engineer. The WQTR proposes that storm water runoff from Property be detained and treated by the use of permanent SWMFs which are identified in the WQTR as Treatment Control BMPs.

The WQTR specifies the manner and standards by which the SWMFs must be inspected, maintained, and repaired in order to retain their effectiveness. City requires Owner to enter into Agreement for the installation, inspection, maintenance, and repair of permanent SWMFs prior to the issuance of construction permits by City for work on Property (Improvements). It is the purpose of this Agreement to assure that the SWMFs are inspected, maintained, and repaired by creating obligations which are enforceable against Owner. Owner hereby covenants and agrees with City as follows:

**1. Maintenance of Storm Water Management Facilities.** Owner shall install, inspect, maintain, repair, and replace all SWMFs for the Improvements as required by the Director of Public Works, or his/her designated representative (“Director”). Maintenance shall include inspection and servicing of SWMFs on the schedule determined necessary to ensure the SWMFs retain their effectiveness. Owner shall maintain, repair and replace the SWMFs until all obligations under this Agreement are transferred to, and assumed by, another owner or entity, satisfactory to City. Owner shall grant Responsible Party assuming any obligation under this Agreement all necessary access right. Owner shall include a copy of the Inspection, Operation, and Maintenance Plan (“IOMP”) for the SWMFs in the WQTR for the project and submit a copy to City, at the time this Agreement is executed.

The IOMP shall describe employee training programs and duties, routine inspection, service and operating schedules, maintenance frequency, and specific maintenance activities. Through the IOMP, Owner may also designate a Responsible Party, satisfactory to City, to maintain the BMPs. The IOMP may be amended from time-to-time by Owner, subject to City approval. Owner shall also be responsible for amending the IOMP upon City's direction.

**2. Record Keeping.** The designation of a Responsible Party to maintain the SWMFs does not relieve Owner of any of the obligations or duties under this Agreement. Owner, its successors, or a designated Responsible Party, shall retain records of the IOMP and maintenance and inspection activities for at least five years. Said records shall be made available within 5 days, upon request by City.

**3. Defense and Indemnity.** Owner agrees to defend, indemnify, protect, and hold harmless City, its agents, officers and employees, from and against all claims, demands, causes of action, liability or loss asserted or established for damages or injuries to any person or property arising out of the installation, inspection, maintenance, repair, or replacement of the BMPs. Claims, demands, causes of action, liability or loss that arise from, are connected with, or are caused or claimed to be caused by the acts or omission of Owner, Owner's agents, officers and employees are covered.

Also covered are the claims, demands, causes of action, liability or loss arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, its agents, officers, or employees which may be in combination with the negligence of Owner, its employees, agents or officers, or any third party. Owner's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the established sole negligence or sole willful misconduct of City, its agents, officers or employees.

Owner further agrees that indemnification referred to above and the duty to defend City requires Owner to pay any costs City incurs that are associated with enforcing the indemnification provision, and defending any claims arising from the installation, inspection, maintenance, repair, or replacement of the SWMFs. If City elects, at its sole discretion, to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense on any claim related to the installation, inspection, maintenance, repair or replacement of the SWMFs, Owner agrees to pay the reasonable value of attorney's fees and all of City's reasonable costs.

**4. Insurance.** Owner shall maintain a policy of liability insurance, as required by and in an amount approved by, City. This policy, with City named as an additional insured, will protect City from any potential claims, which may arise from the installation, inspection, maintenance, repair or replacement of the SWMFs.

**5. Notices.** Owner agrees that it shall, prior to transferring ownership of any land on which any of the SWMFs covered by this Agreement are located, and also prior to transferring ownership of any such SWMFs, provide clear written notice of the above maintenance obligations associated with that SWMF to the transferee. Owner further agrees to provide evidence that Owner has requested the California Department of Real Estate to include in the public report issued for the development of Property, a

notification regarding the SWMF maintenance requirements described in this Agreement.

**6. CITY's Right to Perform Maintenance.** It is agreed that City shall have the right, but not the obligation, to elect to perform any or all of the maintenance activities if, in City's sole judgment, Owner has failed, after a five-day written notice (from the date of postmark or personal delivery) has been provided by City to Owner, to perform the maintenance as agreed. In cases where immediate threat to water quality is imminent, a five-day notice will not be required. If City performs any of the maintenance activities, after City has first (1) served notice to Owner in accordance with the provisions of Chula Vista Municipal Code Chapter 1.40 to perform the maintenance activities and (2) Owner has failed to do so within the reasonable time stated in City's notice, then Owner shall pay all City costs incurred in performing said maintenance activities. Owner's obligation to pay City's costs of performing maintenance activities is a continuing obligation and shall apply whether or not City has required or used all or any portion of Security provided pursuant to Paragraph 8.

**7. Grant of Access.** City will conduct inspections of the SWMFs from time-to-time as required by the National Pollutant Discharge Elimination System Municipal Permit, Order No. R9-2007-0001 and any re-issuances thereof, to ensure adequate maintenance and effectiveness of the SWMFs. Owner grants to City a perpetual access to the SWMFs for performing inspections or any of the maintenance activities specified in paragraph 1. City shall have the right, at any time and without prior notice to Owner, to enter upon any part of Property as may be necessary or convenient for inspection purposes. Owner shall at all times maintain Property so as to make City's access clear and unobstructed. Owner agrees to pay all inspection fees as may be established by City.

**8. Security.** If upon two inspections within any five-year period, City inspectors determine that Owner has failed to effectively operate, maintain, or repair the SWMFs, City may require Owner to provide City with Security to assure the faithful performance of the obligations of this Agreement. Security may be in the form of a Bond, a Cash Deposit, or a Letter of Credit in an amount equal to two-years' cost of maintaining the SWMFs, as determined in the project WQTR and adjusted at 5% per annum. City may use Security to provide funding for the cost to City to perform any of the maintenance activities for the development's SWMFs. City may use all or any part of Security at any time pursuant to this Agreement. Should any portion of Security be used by City, Owner shall deposit additional funds or provide an additional Letter of Credit to City within thirty (30) days in the amount used by City to bring the amount available back up to the amount specified. If Security is a Cash Deposit, and a Substitute Cash Deposit or Letter of Credit is provided that is acceptable to City, any amount of the Cash Deposit not used by City shall be returned to Owner in accordance with City's accounting procedures. The Letter of Credit shall be submitted on bank letterhead using City-approved form. Once Owner has demonstrated effective operation, maintenance, and repair, as determined by City, the Security shall be kept for one year for the first occurrence, and two years for the second occurrence, after which time the Security shall be cancelled and any unused funds returned to Owner.

**9. Agreement Binds Successors and Runs with PROPERTY.** It is understood and agreed that the terms, covenants and conditions contained in this Agreement shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of Owner and City and shall be deemed to be for the benefit of all persons owning any interest in Property. It is the intent of the parties that this Agreement be recorded and be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of Property, who shall be deemed to have consented to and become bound by all the provisions of this Agreement. This Agreement shall commence upon execution of this Agreement by all parties named in the Agreement.

**10. Enforcement.** Failure to comply with the terms of this Agreement constitutes a violation of the Chula Vista Municipal Code Chapter 14.20 "Storm Water Management and Discharge Control" and may result in enforcement action pursuant to City's storm water regulations and administrative procedures.

**11. Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. Venue in any action related to this Agreement shall be in the Superior Court of the State of California, County of San Diego, South County Division. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity, and enforceability of the remaining provisions shall not be affected by the judgment.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER:

CITY OF CHULA VISTA:

\_\_\_\_\_

\_\_\_\_\_  
City Engineer

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

Attachments:

- 1. Exhibit A: Notary Acknowledgement**
- 2. Exhibit B: Legal Description for Property**

H:\NPDES\New Permit\JURMP Update\Post-Construction BMP Agreement Revised 12-20-07.doc